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SUBJECT: PART ONE OF FOUR: RESULTS OF FINANCIAL SYSTEMS
ASSESSMENT TEAM VISIT TO YEMEN MAR 1-7, 2007

11. Summary. A multi-agency Financial Systems Assessment Team (FSAT) conducted a week-long, in-country evaluation of Yemen's capacity to combat money laundering and terrorist financing, in order to determine its most critical training and technical assistance needs on March 1-7, 2007. Yemen is in the early stages of developing its capacity to control money laundering. Interlocutors noted that the cash-intensive nature of the economy, significant levels of corruption and problems in the judicial system would be important factors to consider when developing training and technical assistance programs related to terrorist financing, money laundering and financial crimes.

12. Summary continued. The FSAT Team believes that there are a number of training initiatives that should be pursued, particularly in light of the risks and vulnerabilities related to the money-exchange service sector, the NGO sector, corruption, and increased evidence of narcotics trafficking. The team therefore recommends the following training initiatives: (1) legal drafting assistance to ensure that the proposed new law meets international standards and addresses the vulnerabilities identified in this report; (2) additional training for the Central Bank's Anti-Money Laundering Information Unit and field examiners in anti-money laundering examinations and the detection of suspicious transactions, and (3) basic Anti-Money Laundering Information Unit training and a technical assistance visit by the Financial Crimes Enforcement Network (FinCEN), followed by an exchange visit between the Central Bank's Anti-Money Laundering Information Unit and FinCEN and/or the unit's Spanish Counterpart, SEPBLAC (the Bank of Spain's Executive Service of the Commission for Monitoring Exchange Control Offenses).

13. The first section of the FSAT Team's report follows. This section gives an overview of the FSAT Team and the ROYG's National Anti-Money Laundering Committee and Justice Sector. End summary

FSAT TEAM REPORT

14. A Financial System Assessment Team (FSAT), consisting of Gary Novis (State S/CT-Head of Delegation), Robert Stapleton (Department of Justice, Asset Forfeiture and Money Laundering Section), Patricia Handley (Federal Deposit Insurance Corporation), Jill Murphy (FBI- Terrorist Finance Operations Section), Yamam Fadl (U.S. Treasury's Financial Crimes Enforcement Network-FinCEN), Daniel Harris (U.S. Treasury's

Office of Terrorist Finance and Financial Crimes), and Eugenio Garcia Jimenez (Spanish National Police- representing the European Union) visited Yemen to determine its most critical training and technical assistance needs to combat money laundering and terrorist financing. The team met with a wide array of government and private sector entities in Yemen, including: The Central Bank, the Anti-Money Laundering Information Unit, the Cabinet,s National Anti-Money Laundering Committee, the Political Security Organization (PSO), the Anti-Narcotics Department at the Ministry of the Interior, the Attorney General,s Office, the Customs Authority, the Ministry of Social Affairs and Labor, the Yemen Parliamentarians Against Corruption (Yemen PAC), the Tax Authority, private financial institutions, the Yemen Bankers' Association, and representatives of the Foreign Affairs and Constitutional Committees of the Yemen Parliament.

NATIONAL ANTI-MONEY LAUNDERING COMMITTEE

15. The ROYG Cabinet,s National Anti-Money Laundering Committee was established in accordance with the provision of Anti-Money Laundering (AML) Law No. 35. It is charged with combating money laundering and has specific responsibilities established by Republican Decree No. 89 of 2006 regarding the Executive Writ for AML Law No. 35 of 2003 (AML laws). The Committee meets three-to-four times a month. The Committee is comprised of one representative nominated by each of the following:

- Ministry of Finance, who serves as Chairman
- Central Bank of Yemen Governor, who serves as Deputy Chairman
- Ministry of Justice

- Ministry of Interior
- Ministry of Foreign Affairs
- Central Organization for Control and Audit (COCA)
- Ministry of Industry and Trade
- Yemen Bankers Association
- General Union of Chambers of Commerce and Industry

16. Basic responsibilities of the Committee include developing AML-related regulations, procedures and the suspicious transaction report (STR) format; coordinating the exchange of information with the AML Information Unit, Central Bank of Yemen (CBY), and international parties on AML efforts; sponsoring training seminars and workshops for the financial community; and representing Yemen in international Anti-Money Laundering/Counter-Terrorist Financing (AML/CTF) fora, such as the Middle East and North African Financial Action Task Force (MENAFATF).

17. According to the Committee, sources of money laundering in Yemen are derived from corruption, arms smuggling, tax evasion, and child trafficking. The extent of the hawala network or informal value transfer system was assumed to be limited based on the marginal number of expatriates. (The FSAT, however, was not able to quantify the extent of the hawala network during any of our discussions.)

18. The Committee also has responsibility for legal drafting and as such has drafted a counter-terrorist financing (CTF) law that reportedly combines both AML and CTF elements and addresses all of the FATF 40 9 recommendations. The new law will criminalize terrorist financing by individuals and organizations. The Committee indicated that the draft, once approved, will supersede the existing AML laws. The draft was reviewed by the Committee's legal team and representatives from the United Nations to ensure it complied with international standards. The draft needs to be further vetted and is expected to be presented to Parliament for approval in mid-October 2007 at the earliest. The Committee indicated that the UN resolution on narcotics trafficking and organized crime was presented to Parliament for ratification. The Parliament ratified the narcotics trafficking and organized crime resolution on June 18, 2007.

¶9. In general, the Committee appears actively involved in advancing the financial sector's ability to address potential risks associated with money laundering and terrorist financing. However, it appears that the Committee's efforts are not always effective. Specifically, the STR form it developed does not appear to be effective. The STR form contradicts the confidentiality requirement of the AML laws and includes a section for the subject's signature; the form does not provide a narrative section for describing the nature of the suspicious activity and pertinent information relative to suspicious activity that would be critical to the AML Information Unit (AMLIU) and law enforcement; and the form requires limited information on the identification of the subject be recorded. Apparently, the inclusion of the subject's signature was an oversight and the banks were instructed not to obtain the signature. Based on discussions with the Central Bank and AMLIU staff, it appears that a revised STR form will be issued which will address the shortcomings of the current form.

¶10. In addition to its current duties and responsibilities, the National Anti-Money Laundering Committee is ideally placed to conduct a more strategic approach to developing Yemen's AML/CTF regime. In particular, it could develop a national strategic action plan for AML/CTF which could provide productive guidance for the wide variety of public and private sector entities that are responsible for reducing the vulnerabilities and risks of money laundering, as they develop their institutions, regulations, procedures and controls.

JUSTICE SECTOR

¶11. The FSAT met with members of the Attorney General's Office, the Public Prosecutor's Office, Yemen Parliamentarians Against Corruption (Yemen PAC), and the Parliament's Foreign Affairs Committee to discuss the justice sector's role in Yemen's AML/CTF regime.

Basic Structure and Criminal Procedure

¶12. The Yemeni legal system represents a mixture of shari'a law and civil code legal structure. There are three levels of courts: the court of first instance, an appellate court and a supreme court.

Criminal Procedure

¶13. A criminal case must go through a series of phases before it can be brought to the court of first instance. During the initial investigative phase of the case, law enforcement entities collect evidence pertaining to the alleged crime. The case is then referred to the Public Prosecutor, who continues the investigation. (Prosecutors are considered judges. During this phase of the case, they act as prosecutors and investigating judges.) If the prosecutor believes he needs additional evidence to continue the case, he can refer the case back to law enforcement authorities for further investigation. If the prosecutor believes there is sufficient evidence to go to trial, he issues a charging instrument, much like an indictment.

Limited Police Arrest Authorities

¶14. Unless a crime is committed in plain view of a law enforcement agent, Yemeni law enforcement authorities cannot arrest a suspect until a prosecutor issues an arrest warrant. However, this rarely happens until the Prosecutor issues the charging instrument, which charges a person with committing a criminal offense. Once the charging instrument/indictment is issued, the case goes before a trial judge for a hearing.

¶15. After the trial, either the prosecution or the defense may appeal a judge's ruling in a criminal case, but must do so within 15 days of the judge's decision. A party may appeal procedural or substantive law issues. It is up to the appellant to identify issues for appeal. If a party undertakes a second appeal, the Supreme Court would hear that case. The Supreme Court has the ability to decline to hear a case only where it is permitted by law. In some instances, cases are referred by law to the Supreme Court without either party appealing a ruling.

Justice Sector's Role

¶16. The Public Prosecutor does have a few specialized units, such as one for terrorist crimes, public funds (corruption), juvenile, traffic, and jail administration; however, there is not a specialized unit that handles money laundering or other financial crimes outside of corruption.

¶17. The ROYG enacted Law Number 35 criminalizing money laundering in 2003. This law, however, does not meet many international standards. To date, no one has been prosecuted for money laundering under this law. Currently, there is no law that criminalizes terrorist financing. Yemeni officials told the FSAT that the ROYG is currently working on a draft anti-money laundering and counter-terrorist financing law with the help of the United Nations Office on Drugs and Crime (UNODC), the IMF and the World Bank. The National Anti-Money Laundering Committee (NAMLC) is responsible for drafting this law. Once it submits the draft to the Parliament, three committees will review it: the Foreign Affairs Committee, the Financial Affairs Committee and the Constitutional Committee. ROYG officials asked the FSAT to review the current drafts and stated that they are open to any recommendations or suggestions that may help the law meet international standards.

¶18. Under the current legal regime, there is no law enforcement agency with specialized skills or authorities to pursue money laundering investigations. It appears that any law enforcement agency may initiate a money laundering investigation, although most Yemeni officials appear to think that such investigations will not be initiated through law enforcement investigations, but rather through work and initiatives of the AML Information Unit.

¶19. In terms of technical assistance and training needs, the Yemeni legal system could benefit from assistance with regard to ethics training for employees, enhanced administrative

techniques, case development, and interagency cooperation. It was patently clear that, at the time of this assessment, money laundering was a very difficult concept for most legal staff to comprehend fully.

¶20. One systemic problem with respect to AML/CTF is that under the current legal system, Yemeni defendants can be charged with numerous offenses, but they can only be convicted of one crime. The conviction is usually for the crime with the harshest penalty, whereas money laundering and similar offenses are most effective when they can be charged separately or as an additional offense. The FSAT was not able to determine whether under the current AML law the prosecution must first obtain a conviction for a predicate offense before gaining a conviction for money laundering. This may be a moot point, however, because the defendant can only be convicted of one crime arising from the same set of facts.

¶21. Due to the lack of experience, adequate infrastructure and widespread corruption throughout the law enforcement and legal system, it does not appear the ROYG understands how to initiate a money laundering investigation. Indeed, it appears that ROYG authorities rely heavily on received accusations, rather than pro-active law enforcement activity. All investigators, prosecutors and judges could, therefore,

benefit from basic (i.e. anti-money laundering) investigative training.

¶22. The ROYG has a forfeiture system in place, but a judge must order the forfeiture for the items involved in or proceeds from the crime for which the defendant was convicted. Forfeiture is available for all crimes and extends to funds and property. Authorities deposit forfeited funds into the general treasury, unless the funds are the proceeds from a drug offense, in which case the proceeds go to law enforcement authorities, who can use the proceeds to buy vehicles or other equipment. If the court orders a defendant to forfeit property, the judge issues an order to auction off the property to the public, with the funds from the auction going into the general treasury. ROYG authorities said they could forfeit real property because there are no laws prohibiting them from doing so, but admitted they have not yet done so. In some instances, however, the courts can order real property, such as a dwelling, to be closed for one year before the owner may use it again.

¶23. The FSAT also met with Yemen PAC, a group of Parliamentarians working to combat corruption in Yemen. They are currently working to improve the Anti-Corruption Law in Yemen and are in the process of creating an Anti-Corruption Board. There is also a new law that will soon go into effect that will require ROYG officials and employees to provide financial disclosures, but these disclosures will not be available to the public. This group is devoted to conquering the problem of corruption in Yemen and is quite aware of the problems Yemen faces with regards to corruption. In this respect, an AML law that meets international standards, and that includes provisions for financial investigations, a functioning AML Information Unit, and an improved asset forfeiture system could help Yemen PAC and ROYG officials to reduce corruption.

¶24. The FSAT also met with the Parliament,s Foreign Affairs Committee to discuss the importance of the draft AML/CTF bill it will soon receive for review and approval. The Committee was very keen on discussing issues related to the ratification of the UN Convention to Suppress Terrorist Financing and the number of problems they have with the Convention. The FSAT relayed to the Committee the need for passage and implementation of an AML/CTF law that meets international standards and the positive effects such a law could have on Yemen,s economy.

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